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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,434	02/27/2004	J. Wesner Price	16920/09001	5697
27530	7590	03/03/2005	EXAMINER	
NELSON MULLINS RILEY & SCARBOROUGH LLP P.O. BOX 11070 COLUMBIA, SC 29211			TRETEL, MICHAEL	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 03/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/789,434	PRICE, J. WESNER	
<b>Examiner</b>	<b>Art Unit</b>		
Michael Trettel	3673		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 25 October 2004.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-35 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 29-33 and 35 is/are allowed.

6)  Claim(s) 1-4,8-12,14,16,22-28 and 34 is/are rejected.

7)  Claim(s) 5-7,13,15 and 17-21 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/25/04.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_ .

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 8 to 12, 14, 16, 22 to 24, 27, 28, and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Dyer, Jr. (US 5,319,814). Dyer shows an innerspring mattress 500 in Figure 5 that has a padded cover 130. The cover 130 includes an upper foam section 120A that covers the entire upper surface of the mattress, and a supplemental foam section 120B that covers only the midsection of the mattress. The foam sections 120A, 120B are made from convoluted foam material with a density of 1 lb/cubic foot and an ILD of 30 (column 4, lines 6 to 17), with the sections having the convolutions facing one another so that they nest together. The foam section 120B is used to provide supplemental support to the midsection of the mattress, as described in column 2, lines 60 to 68 and column 3, lines 1 to 37. A polypropylene cover 130 is used to holds the foam padding sections 120 in place. Note that a second pair of foam sections 120A', 120B' can be placed upon the lower face of the mattress core, such that the mattress has the supplemental support on both sides of the mattress. The upper foam section 120A can be considered a first cushion top, and the supplemental foam section 120B can be considered a first insert. Note that Dyer states that the padded cushion

cover construction can be used upon differing types of mattresses already known in the art (column 3, lines 24 to 30).

Claims 1, 2, 4, 8 to 10, 14, 23, 25, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by (US 6,360,390). Bonaddio shows an edge support for a spring mattress 10. The mattress 10 includes an innerspring 12, an insulator scrim layer 21, and a quilted cover 16. The quilted cover 16 includes an outer ticking layer 27 and foam/fiber layers 25. Enclosed between the quilted panel 16 and the scrim layer 21 is the edge reinforcement layer formed by foam layers 23', 32'. The layer 32' has a raised perimeter that bounds a recessed area into which the layer 23' is placed, with layer 32' being made of a firmer foam than the layer 23'. Read column 3, lines 3 to 23. The layer 23' is therefore smaller in area than the upper surface of the spring mattress, and can be considered to be a raised sleep zone. Note that the claims do not specify what the zone is raised relative to.

#### *Allowable Subject Matter*

Claims 5 to 7, 13, 15, and 17 to 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 29 to 33 and 35 are allowed.

#### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lilly et al, Dyer, Jr (US 5,523,144), Mossbeck et al, Barman, and Selman et al show reinforcing upper panels and toppers for use upon spring core mattresses which are of general interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Trettel whose telephone number is 703-308-0416. The examiner can normally be reached on Monday, Tuesday, Thursday, or Friday from 7.30 am to 5.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford, can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

  
Michael Trettel  
Primary Examiner  
Art Unit 3673